

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

THE PHILADELPHIA COCA-COLA
BOTTLING COMPANY¹

Employer

and

Case 4–UC–407

TEAMSTERS LOCAL UNION NO. 830
a/w INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO

Petitioner

REGIONAL DIRECTOR’S DECISION AND ORDER

The Employer, Philadelphia Coca-Cola, produces and distributes soft drinks and related products at various facilities in southeastern Pennsylvania. The Petitioner, Teamsters Local 830, currently represents a unit of approximately 400 employees who work at the Employer’s Aston, Pennsylvania, North Wales, Pennsylvania and Philadelphia, Pennsylvania facilities. The Employer and the Petitioner are parties to a four-year collective bargaining agreement covering the unit employees that was effective on April 28, 2004.² The Petitioner filed a unit clarification petition with the National Labor Relations Board (NLRB) under Section 9(b) of the National Labor Relations Act seeking to clarify the existing unit to include eight sales representatives who work at the Employer’s Bordentown, New Jersey facility.³ The Petitioner asserts that the sales representatives who work in Bordentown perform the same work as that performed by sales representatives who work in Aston, North Wales and Philadelphia, share some of the same working conditions, including the same level of supervision, and thus share an overwhelming community of interest with unit employees warranting their accretion to the existing unit. The Employer contends that the Bordentown sales representatives are not an accretion to the existing unit as there is no interchange among employees between Bordentown and its other facilities,

¹ The Employer’s name appears as amended at the hearing.

² The record does not include a copy of the new collective bargaining agreement and does not indicate its termination date.

³ The original petition described the proposed unit as “all full time and regular part time operations, warehouse, fleet, cooler service, sales employees, account representatives, account merchandisers and sales representatives employed by the Employer at its plants or plants located in Philadelphia or vicinity.” The parties stipulated that the Employer employs eight sales representatives in Bordentown.

there is separate day-to-day and overall supervision and Bordentown is geographically separate and distinct from the Employer's other facilities. The Employer also contends that the Bordentown sales representatives constitute a separate appropriate bargaining unit.

A Hearing Officer held a hearing in this matter, and the parties filed briefs. I have considered the evidence and the arguments presented by the parties and, as discussed below, I have concluded that that the unit should not be clarified and I have dismissed the petition. In this Decision, I will first present an overview of the Employer's operations and then shall review the factors that must be evaluated in determining whether the sales representatives employed in Bordentown should be accreted to the existing unit. Thereafter, I will present in detail the relevant facts and reasoning that support my conclusion.

I. OVERVIEW OF OPERATIONS

Until 1997, the Employer's facilities consisted of Aston, North Wales and Philadelphia.⁴ In 1997, the Employer acquired a facility in Lawrenceville, New Jersey from New York Coca-Cola. The Lawrenceville facility opened in March 1997 but was moved to Bordentown, New Jersey in 2000. The Bordentown territory is comprised of sales centers in Marlton, Marmora and Bordentown. The Bordentown sales center is approximately 30 miles from the Philadelphia facility.

The Employer's Aston, North Wales and Philadelphia facilities each have their own group supervisors who report to area sales managers (ASMs). These ASMs are specific to each location. The Aston, North Wales and Philadelphia ASMs report to Director Phil Marchesani who in turn reports to Vice President of Sales Mike Hagen.

John Jagielski is the Director of Sales for the Employer's Marlton, Marmora and Bordentown sales centers. Jagielski, who reports directly to Vice President Hagen, supervises five ASMs assigned to the three sales centers. There is one ASM in Bordentown and two each in Marlton and Marmora. There are 12 sales representatives and an undisclosed number of route merchandisers at the Marlton sales center and 12 sales representatives and an undisclosed number of route merchandisers at the Marmora sales center. The Marlton sales representatives and route merchandisers are represented by Teamsters 676. The Marmora sales representatives and route merchandisers are represented by Teamsters 331. There are eight sales representatives, one of whom fills in for absent sales representatives, and an undisclosed number of route merchandisers at the Bordentown sales center.⁵

The Employer and the Petitioner have been parties to successive collective bargaining agreements since at least 1995. The April 15, 2000 to April 14, 2004 collective bargaining agreement covers a unit of "all employees, at its plant or plants located in Philadelphia or

⁴ The Philadelphia facility is referred to interchangeably in the record as the SDS, Gianniere, Philadelphia and the Philadelphia main office.

⁵ The Petitioner does not seek to include the route merchandisers in the existing unit.

vicinity, in the classifications covered in Schedule A.” Schedule A identifies the following classifications: delivery merchandisers; sales representatives; consumer route drivers; quality control/syrup, production operator, chief mechanic, lead mechanic, mechanic 2nd class and apprentice in the Operations department; tractor trailer drivers and warehouse operator in the warehouse; chief mechanic, lead mechanic, mechanic 2nd class and apprentice in the fleet department; chief mechanic, lead mechanic, mechanic 2nd class, apprentice and cooler delivery driver in the cooler service department; and bulk delivery drivers, extra drivers, special event driver and signwriter in the sales department. The contract covers the unit employees who work in Aston, North Wales and Philadelphia. The most recent collective bargaining agreement is a four-year agreement effective from April 28, 2004. The Petitioner has never represented any of the employees employed in the Marlton, Marmora or Bordentown sales centers.

II. FACTORS RELEVANT TO DETERMINING WHETHER THE BORDENTOWN SALES REPRESENTATIVES SHOULD BE INCLUDED IN THE UNIT

The Board will entertain unit clarification petitions to settle the question of whether employees in newly-created classifications are an accretion to existing units, where the parties were unable to resolve the issue during collective bargaining negotiations and the petition is filed shortly after the contract was executed. *Premcor, Inc.*, 333 NLRB 1365, 1366 (2001); *Archer Daniels Midland Co.*, 333 NLRB 673, 675 (2001); *St. Francis Hospital*, 282 NLRB 950 (1987). The Board has followed a restrictive policy in finding accretions to existing units in order to preserve the right of employees to choose their own bargaining representative. *Archer Daniels Midland Co.*, supra; *Towne Ford Sales*, 270 NLRB 311 (1984), enfd. 759 F.2d 1477 (9th Cir. 1985). Thus, in *Melbet Jewelry Co.*, 180 NLRB 107 (1969), the Board emphasized that it will not, under the guise of accretion, compel a group of employees to be included in an overall unit, “without allowing those employees the opportunity of expressing their preference in a secret election or by some other evidence that they wish to authorize the Union to represent them.” The Board will not find an accretion when the employee group seeking to be accreted would constitute a separate appropriate bargaining unit. *Passavant Retirement and Health Center*, 313 NLRB 1216 (1994). Rather, the Board will permit accretion to promote labor relations stability only if new employees have such strong common interests with members of the existing bargaining unit that the new employees would have to be included in the unit or covered by the contract. *United Parcel Service*, 303 NLRB 326, 327 (1991), enfd. 17 F.3d 1518 (D.C. Cir. 1994), cert. denied, 513 U.S. 1076 (1995). See also *Archer Daniels Midland Co.*, supra. When determining if new employees have a community of interest with employees of an existing bargaining unit, the Board considers various factors including interchange and contact among employees, degree of functional integration, geographic proximity, similarity of working conditions, similarity of employees’ skills and functions, supervision, and collective-bargaining history. *E.I. Du Pont de Nemours*, 341 NLRB No. 82, p. 2 (2004); *Archer Daniels Midland Co.*, supra. The factors normally viewed as most important are common day-to-day supervision and employee interchange. *Super Valu Stores*, 283 NLRB 134, 136 (1987); *Towne Ford Sales*, supra.

The Board has further held that a single facility unit geographically separate from other facilities is presumptively appropriate, even though a broader unit might also be appropriate. *Passavant Retirement and Health Center*, supra; *Manor Healthcorp*, 285 NLRB 224, 225 (1987). This presumption may be rebutted if the additional employees have little or no separate group identity and share an overwhelming community of interest with the preexisting unit. *Passavant Retirement and Health Care Center*, supra.

III. FACTS

Creation of the Bordentown Sales Representative Position

The Employer created the sales representative position in March 1997 at the then Lawrenceville facility and hired five sales representatives. At that time, the Employer and the Petitioner were parties to a collective bargaining agreement effective from June 15, 1995 to April 14, 2000. Although the parties negotiated a successor collective bargaining agreement in 2000 effective from April 15, 2000 to April 14, 2004, there was no discussion of the Bordentown sales representative classification during those negotiations. The Union unsuccessfully sought to have the Bordentown sales representatives included in its existing unit during the negotiations for the current collective-bargaining agreement.

Duties and Responsibilities of the Bordentown Sales Representatives

Bordentown sales representatives meet for about 40 minutes every morning with Bordentown Area Sales Manager John Kitchenman before commencing their sales duties. Prior day sales, opportunities in the trade, selling, and displays are reviewed and discussed at the meeting. At the end of the meeting, Bordentown sales representatives begin visiting their customers, i.e., their established accounts. Each account has its own pre-established goals. At the end of the day the Bordentown sales representatives return to Bordentown where they review the decom,⁶ do follow-up work needed for the next day's selling activities, e.g., making banners and communications for the route merchandisers to distribute to supermarkets, and perform any needed file maintenance work. Bordentown sales representatives use hand-held computers in the performance of their job duties.⁷

Duties and Responsibilities of the Bargaining Unit Sales Representatives

Employee Steven Shugarts testified that there are 17 bargaining unit sales representatives in each of the Employer's Aston and North Wales facilities. The duties of the Aston bargaining unit sales representatives include visiting customers, selling the Employer's products and

⁶ Decom is the process sales representatives use to submit their orders to the distribution center.

⁷ Bordentown sales representatives use a new computer system for pricing orders. Although the computer is different from those currently used at Aston and North Wales, there are a couple of pilot operators at Aston and North Wales. Prior to two months ago, all locations used the same computer system. All sales representatives input the same company-wide product codes into their computers.

transmitting their orders to the Philadelphia distribution center to be delivered the next day by the delivery personnel. They visit all accounts,⁸ go through items they have for sale, write the order for each account and key the orders into a computer. At the end of the day they download their orders through the telephone system to the Philadelphia main office. The orders are then sorted for distribution the next day. According to Shugarts, Aston bargaining unit employees use an RN computer, and a Nextel phone system for taking calls from their managers or anyone within the company.⁹ Aston bargaining unit sales representatives are supervised by ASM Jim McIlhenny who reports directly to Director Phil Marchesani. Marchesani reports to Vice President of Sales Mike Hagen. Shugarts testified that although he has seen openings for Bordentown area sales representative positions posted at the Aston facility, he was not aware of any Aston area representative filling a Bordentown position or a Bordentown sales representative ever filling a bargaining unit job opening. According to Shugarts, the company-wide meetings attended by all the sales representatives are conducted once per year. These meetings used to take place more often, but for the past couple of years each individual facility has been conducting its own meetings at its own facility.

Contact and Interchange and Supervision

Bordentown is located approximately 30 miles from Philadelphia. The Bordentown sales representatives interact primarily with ASM Kitchenman. If a Bordentown sales representative is on vacation or out sick the Bordentown extra sales representative will perform the duties.¹⁰ Bordentown sales representatives never go into the territories serviced by bargaining unit employees and do not service those territories. No bargaining unit sales representative has ever applied for or accepted a Bordentown sales representative position. None of the bargaining unit sales representatives has ever worked in, or conducted any selling activity out of, the Bordentown sales center. Bordentown sales representatives attend off site meetings that are also attended by the bargaining unit sales representatives. Such company-wide meetings are held to launch new products and one such meeting was recently held when the employer launched its C-2 product.¹¹

The Bordentown sales representatives' immediate supervisor, ASM Kitchenman, reports directly to Director of Sales Jagielski. Jagielski does not supervise any bargaining unit sales representatives or any ASMs who supervise the bargaining unit sales representatives. The record does not disclose if the Bordentown sales representatives are evaluated or by whom.

Director of Sales Jagielski testified that Bordentown sales representatives' employee relations issues are handled by Human Resources Manager Carol Coles. Coles testified that her

⁸ Aston bargaining unit employees do not visit supermarkets as those accounts are handled by the Employer's bulk division.

⁹ The record does not disclose if the Bordentown sales representatives use the same phone system.

¹⁰ The record discloses that Aston and North Wales also have their own extra sales representatives who cover vacations and sick days for the employees in those facilities.

¹¹ Fourth quarter kick off meetings are also attended by all the company sales representatives.

main concentration is employee relations issues for the Employer's non-union employees. Coles reports to Vice President of Human Resources Tracee Hunt. Employee relations issues for the Aston, North Wales and Philadelphia sales representations are handled by Luis Fonseca, the Employer's Director of Labor Relations. Fonseca handles labor relations issues for all of the Employer's union represented employees and reports to Senior Vice President of Operations Cliff Risell. Fonseca does not deal with any issues relating to non-represented employees.

Compensation and Working Conditions

Bordentown sales representatives report to work at 7:00 a.m., and start their workday at 7:30 a.m., Monday to Friday.¹² The Employer provides Bordentown sales representatives with uniforms consisting of a gray shirt with the Employer's logo, black pants, black shoes and a hat, but they are not required to wear them. The Aston, North Wales and Philadelphia sales representatives wear the same uniforms as provided to the Bordentown sales representatives.

Bordentown sales representatives as well as unit employees are paid on a base plus commission basis. The Bordentown sales representatives receive some of the same fringe benefits as the Employer's bargaining unit employees, including medical, dental, and vision insurance and short term disability plans. Bordentown sales representatives and bargaining unit sales representatives receive life insurance and accidental dismemberment insurance. Bargaining unit employees receive one-half of their salaries while Bordentown sales representatives receive twice their salaries for these insurance benefits. The Employer provides Bordentown sales representatives with an employer-paid long-term disability benefit, while bargaining unit sales representatives must pay for their long term disability benefit. Bordentown sales representatives and bargaining unit employees receive pension benefits but the amounts differ. The Employer also provides a 401(k) plan to the Bordentown sales representatives. The 401(k) plan is not available to bargaining unit employees. Bordentown sales representatives drive their own vehicles and are provided with a \$475 per month car allowance. The Employer provides a company-wide incentive program as well as facility specific incentive programs.

IV. ANALYSIS

I find that the Bordentown sales representatives are not an accretion to the existing unit. The Bordentown sales representative position was established in 1997, during the term of the parties' 1995 to 2000 collective bargaining agreement. The parties negotiated the 2000 to 2004 collective bargaining agreement without discussion of the Bordentown sales representatives. The Petitioner unsuccessfully sought to include these sales representatives in the most recent contract that was effective April 28, 2004. It is clear that the sales representative position was not newly created and the parties have historically failed to include these employees in their bargaining unit. Since the Bordentown sales representatives have been historically excluded from the unit, I find that the petition was not filed in a timely manner. See *United Parcel Service*, 303 NLRB 326, 327 (1991).

¹² The workday for bargaining unit sales representatives also begins at 7:30 a.m.

There is no interchange between the Bordentown sales representatives and the unit employees. The Bordentown sales representatives do not perform the work of, or substitute for, any unit employees or vice-versa. On the contrary, each works in his or her own distinct territory and they have separate supervision. In addition, labor relations for bargaining unit employees is handled by Director of Labor Relations Fonseca, while employee relations for the Bordentown sales representatives is handled by Human Resources Manager Coles. With the exception of the yearly meetings, there is no interaction between the Bordentown sales representatives and the bargaining unit employees. The bargaining unit sales representatives and the Bordentown sales representatives have the same uniforms although Bordentown sales representatives are not required to wear the uniform. Although Bordentown sales representatives perform the same work, this common factor is outweighed by the factors that militate against finding an accretion. On balance, I find the Bordentown sales representatives do not share an overwhelming community of interest with employees in the unit to rebut the presumption that the Bordentown sales representatives are a separate appropriate unit. *Passavant Retirement and Health Center*, supra. I further find that the Petitioner's contention that the Bordentown sales representatives should be accreted to the existing unit is without merit. *Archer Daniels Midland Co.*, supra; *Passavant Retirement and Health Center*, supra.

Accordingly, the Petitioner's request that the unit be clarified to include the Bordentown sales representatives is denied, and the petition is dismissed.

V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner is a labor organization within the meaning of the Act.
4. The unit should not be clarified as requested by the petition.

VI. ORDER

IT IS HEREBY ORDERED that the petition filed in this case be, and it hereby is, dismissed.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. A request for review may also be submitted by E-mail. For details on how to file a request for review by E-mail, see <http://gpea.NLRB.gov/>. This request must be received by the Board in Washington by 5:00 p.m., EDT on July 30, 2004.

Signed: July 16, 2004

at Philadelphia, Pennsylvania

/s/ [Dorothy L. Moore-Duncan]

DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four